



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/150793

PRELIMINARY RECITALS

Pursuant to a petition filed July 22, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance, a hearing was held on August 20, 2013, at Port Washington, Wisconsin.

The issue for determination is whether the agency properly terminated Medicaid (MA) eligibility to the Petitioner based on assets exceeding the asset limit effective June 1, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Pahoua Vang

Ozaukee County Department of Social Services
121 W. Main Street
PO Box 994
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County.

2. On May 28, 2013, the Petitioner submitted a renewal application for MA – Nursing Home Long Term Care and Family Care. The Petitioner reported a life insurance policy from Western Reserve Life with a cash surrender value of \$3232.14.
3. On May 31, 2013, the agency issued a Notice of Proof Needed to the Petitioner requesting a copy of the life insurance policy and statement from the insurance company showing the policy's current cash value.
4. On June 5, 2013, the Petitioner submitted a statement from the life insurance company showing a cash value of \$3,211.03 as of November 26, 2012.
5. On June 7, 2013, the agency issued a Notice of Decision to the Petitioner informing him that he was not eligible for MA effective June 1, 2013 due to assets exceeding the asset limit.
6. On June 27, 2013, the Petitioner's wife submitted a handwritten statement to the agency indicating that she and her husband are dedicating his life insurance policy to burial purposes. The Petitioner's wife also submitted a Funeral Purchase Contract with Eernisse Funeral Home for \$17,945.61 for funeral and burial services for the Petitioner.
7. On July 22, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The MA asset limit for an individual is \$2,000. Wis. Stat., §49.47(4)(b)3m. If assets are above that limit, the person is not eligible for MA. Included in assets which must be counted against the MA limit are cash values of life insurance policies if the total face value of the policies is more than \$1,500. Wis. Adm. Code, §DHS 103.06(10); MA Handbook, § 16.7.5. The agency relies on this section of the MA Handbook to reach its conclusion that the Petitioner's life insurance cash surrender value of \$3,211.03 puts him over the asset limit for MA eligibility.

The Petitioner's representative asserts that the agency should have applied the spousal impoverishment laws to this case because the Petitioner is institutionalized and has a community spouse. In particular, the Petitioner argues that the cash value of the life insurance policy was designated for burial purposes on June 27, 2013 and this designation is sufficient to exempt the asset. The agency counters this argument by noting that this designation does not meet the criteria in MA Handbook § 16.5.2 of a burial insurance policy.

The Wisconsin Administrative Code in § DHS 103.075(5)(b)2d states as follows:

The agency shall count all available assets belonging to either spouse in the month for which eligibility is being determined except for the following:

...

d. Burial assets and *funds set aside for the purpose of meeting burial expenses, regardless of value*. This includes burial trusts, burial funds, burial plots, burial insurance and *other property or funds expressly set aside for burial expenses*;

Wis. Admin. Code § 103.075(5)(b)2d.

DHA has held in previous decisions that this Code provision allows for a wider array of exemptions in the spousal impoverishment setting. DHA has found the narrower MA Handbook provisions regarding exemptions for burial trusts, burial funds and burial insurance are in conflict with the specific Code provision and therefore must yield. See the Secretary's Final Decision in DHA Case No. MED 40/46891. See also DHA Case No. MED 51/116537.

The spousal impoverishment provision at Section 18.4.1 of the MA Handbook states that “any/all assets designated for burial purposes are exempt” in determining the assets to be counted. Reading this section in conjunction with the Code provision cited earlier leads me to conclude that the Petitioner’s written designation of the cash value of the life insurance policy is an express designation of funds set aside for burial expenses. Those funds are, therefore, exempt and are not to be counted as assets in determining MA eligibility. Because the Petitioner seeks eligibility beginning June 1, 2013 and the Petitioner designated the funds for burial purposes on June 27, 2013, the agency should consider the funds as an exempt asset back to June 1, 2013.

CONCLUSIONS OF LAW

The cash value of the life insurance policy (\$3,211.03) is an exempt asset based on the Petitioner’s designation of the funds for burial purposes. Therefore, the agency may not count the asset in determining Petitioner’s MA eligibility.

THEREFORE, it is

ORDERED

That this matter is sent back to the agency with instructions to take all administrative steps necessary to certify Petitioner for Medicaid effective June 1, 2013 unless there is some other bar to that eligibility (an issue other than the cash value of the life insurance policy). These actions shall be completed within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

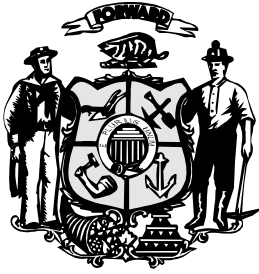
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of October, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 9, 2013.

Ozaukee County Department of Social Services
Division of Health Care Access and Accountability